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(I)



# In the Supreme Court of the United States

OCTOBER TERM, 1942

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No. 363

S. R. BRACKIN, PETITIONER

*v.*

THE UNITED STATES

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ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT  
OF CLAIMS

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BRIEF FOR THE UNITED STATES IN OPPOSITION

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## OPINION BELOW

The opinion of the court below (R. 13-20) is reported in 44 F. Supp. 327.

## JURISDICTION

The judgment of the Court of Claims was entered April 6, 1942 (R. 20). On May 12, 1942, petitioner filed a motion for a new trial which was overruled June 1, 1942 (R. 20-21). The petition for a writ of certiorari was filed August 31, 1942. The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925, as amended by the Act of May 22, 1939.

## QUESTION PRESENTED

Whether a producer and ginner of cotton who purchased tax exemption certificates from a pool established by the Secretary of Agriculture, and thereafter surrendered the certificates in lieu of payment of the ginning tax, can recover from the United States the amount paid for the certificates.

## STATUTES AND REGULATIONS INVOLVED

The applicable statutes and regulations are the same as those involved in the case of *J. H. Crain and R. E. Lee Wilson, Jr., Trustees of Lee Wilson & Co., a Business Trust v. United States*, No. 199, this Term, and reference is made to our brief in opposition in that case where they are set forth. In addition, Section 151 of the Judicial Code (U. S. C., Title 28, Sec. 257), also applicable in this case, is as follows:

SEC. 151. Whenever any bill, except for a pension, is pending in either House of Congress providing for the payment of a claim against the United States, legal or equitable, or for a grant, gift, or bounty to any person, the House in which such bill is pending may, for the investigation and determination of facts, refer the same to the Court of Claims, which shall proceed with the same in accordance with such rules as it may adopt and report to such House the facts in the case and the amount, where the same can be liquidated, including any facts bearing upon the question whether

there has been delay or laches in presenting such claim or applying for such grant, gift, or bounty, and any facts bearing upon the question whether the bar of any statute of limitation should be removed or which shall be claimed to excuse the claimant for not having resorted to any established legal remedy, together with such conclusions as shall be sufficient to inform Congress of the nature and character of the demand, either as a claim, legal or equitable, or as a gratuity against the United States, and the amount, if any, legally or equitably due from the United States to the claimant: *Provided, however,* That if it shall appear to the satisfaction of the court upon the facts established, that under existing laws or the provisions of this chapter, the subject matter of the bill is such that it has jurisdiction to render judgment or decree thereon, it shall proceed to do so, giving to either party such further opportunity for hearing as in its judgment justice shall require, and it shall report its proceedings therein to the House of Congress by which the same was referred to said court.

#### STATEMENT

The findings of fact of the Court of Claims (R. 7-13) may be summarized as follows:

On July 7, 1941, the Senate of the United States passed a resolution known as S. Res. 136, 77th Cong., 1st Sess., which reads as follows (R. 7):

*Resolved*, That the bill (S. 1628)<sup>1</sup> entitled "A bill for the relief of S. R. Brackin," now pending in the Senate, together with all the accompanying papers, be, and the same is hereby, referred to the Court of Claims, in pursuance of the provisions of an Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March 3, 1911; and the said court shall proceed with the same in accordance with the provisions of such Act and report to the Senate in accordance therewith.

The Bankhead Cotton Act, c. 157, 48 Stat. 598, imposed a tax on the ginning of cotton which was not exempt from the tax at the rate of 50% of the average central market price per pound of seven-eighth inch Middling Spot cotton, but in no event less than 5 cents per pound of lint cotton. The Act required that each bale of cotton after

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<sup>1</sup> S. 1628, 77th Cong., 1st Sess., is as follows:

#### A BILL

For the relief of S. R. Brackin.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to S. R. Brackin, the amount of \$346.20, together with interest thereon, at the rate of 4 per centum from the date of payment of such amount as taxes under Public Law numbered 169, Seventy-third Congress. Amounts expended for certificates used in lieu of tax payments shall be considered as taxes hereunder.

ginning be identified by a bale tag attached by the ginner indicating whether the cotton was exempt from tax or the tax had been paid. The amount of tax exemption certificates to which a cotton producer was entitled was determined by certain formulae set forth in the Act. After exhausting his tax-exemption certificates a producer could either pay the tax to the ginner, place his cotton in storage, or he could purchase further tax-exemption certificates from other cotton producers at prices prescribed by the Secretary of Agriculture as the official transfer rate (R. 7-8).

Under the Act an allotment of tax-exemption certificates was made to each cotton farmer upon application filed in accordance with prescribed regulations. Tax-exemption certificates could be transferred or assigned in such manner as the Secretary of Agriculture prescribed. To facilitate such transfer between producers, the Secretary of Agriculture established a series of three national surplus cotton tax-exemption certificate pools. The money collected by the pools from the farmers wishing to purchase certificates belonged to and were distributed to the farmers who had placed their surplus certificates therein for disposition after deducting a small amount for the administrative expenses of the pool (R. 9).

The remittances made by purchasers of certificates from each pool were deposited by the pool manager in the United States Treasury and pay-



ments to the participants in the pool were made by Government checks. No funds received in connection with the pool were covered into the general fund of the Treasury<sup>2</sup> and the United States did not profit or receive any benefit from the operation of the pools. Producers who desired to buy cotton tax exemption certificates from the pool forwarded with their orders for certificates checks or money orders made payable to the order of E. L. Deal, Certificate Pool Manager, and were by him endorsed for deposit in the Treasury to the account of G. F. Allen, Chief Disbursing Officer, Division of Disbursement. The funds were deposited in a special trust account (R. 9-10).

Petitioner is a cotton producer who received his share of tax exemption certificates. However, he produced cotton in excess of his allotment and on November 14, 1935, purchased from the 1935 pool three tax exemption certificates representing 8,655 pounds of lint cotton for which he made payment to the pool manager by cashier's check in the amount of \$346.20 (R. 12).

On May 27, 1939, petitioner filed a claim with the Commissioner of Internal Revenue for the refund of the sum of \$800 which included the

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<sup>2</sup> The Court of Claims refused to reconsider these findings in the light of the correspondence, set forth at pp. 25-30 of the petition. That correspondence was submitted to the Court of Claims merely out of an abundance of caution, and does not constitute any admission of its relevance.

amount claimed in this case, i. e., \$346.20. The claim was rejected by the Commissioner of Internal Revenue by letter dated August 28, 1939 (R. 12).

#### ARGUMENT

This suit was brought in the Court of Claims based upon a Senate bill referring the claim of S. R. Brackin, the petitioner, to the Court of Claims under the provisions of the Act of March 3, 1911, c. 231, 36 Stat. 1135 (see Section 151 thereof, *supra*). On the merits, this case presents the same question that is involved in *J. H. Crain and R. E. Lee Wilson, Jr., Trustees of Lee Wilson & Co., a Business Trust, v. United States*, No. 199, present Term, pending on petition for certiorari. The brief for the United States in opposition in that case sets forth reasons for the denial of the petition which are equally applicable here.

#### CONCLUSION

The petition should be denied.

Respectfully submitted.

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OCTOBER 1942.